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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 26.7.2007.

1. Chand Singh
2. Nand Singh, sons of Kunda Singh son of China Singh,
residents of Village Koreana, Tehsil Talwandi Sabo,
District Bathinda. .... Appellants.

vs

1. Nachhatar Singh
2. Darshan Singh, sons of Sh.Gurbax Singh son of Sh.Kunda Singh
residents of Village Koreana, Tehsil Talwandi Sabo,
District Bathinda. .... Respondents.

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.N.K.Singla,Advocate,for the appellants.

R.S.Madan, J.

This regular second appeal is directed against the judgment and decree dated 5.6.2007, passed by the learned District Judge, Bathinda, whereby she dismissed the appeal of the plaintiffs-appellants, arising out of the judgment and decree dated 18.12.2006 vide which the trial court has dismissed their suit for declaration and permanent injunction.

In brief the facts of the case are that the plaintiffs- appellants are the sons of Basso widow of Kunda Singh. The defendants-respondents nos.1 and 2 are the grandsons of Basso. The suit was got dismissed as withdrawn against the children of deceased daughter of Basso who were defendants no.3 to 7 in the plaint. The appellants filed a suit for declaration and permanent injunction to the effect that they are owners in joint possession of 1/16th share of land measuring 315 kanals 3 marlas situated in Village Kalalwala, 1/8th share of land measuring 69 kanals 17 marlas situated in Village Gahlewala, and 1/16th share of land measuring 244 kanals 17 marlas situated in Village Koreana, as detailed in the plaint, on

the basis of registered will 6.7.1995 and the registered Will dated 2.8.1995 is illegal, null and void and the same is liable to be set aside, and the mutation nos.1531, 2044, and 1628 sanctioned on the basis of Will dated 2.8.1995 regarding land in Village Kalalwala, Gahlewala and Koreana respectively are also illegal, null and void. As stated in the plaint, Smt. Basso was owner of land to the extent 1/16th share of land measuring 315 kanals 3 marlas situated in Village Kalalwala, 1/8th share of land measuring 69 kanals 17 marlas situated in Village Gahlewala, and 1/16th share of land measuring 244 kanals 17 marlas situated in Village Koreana. She died on 15.11.2000, leaving behind the plaintiffs and defendants no.1 and 2 as her legal heirs on the basis of registered Will dated 6.7.1995. The plaintiffs became owners in joint possession of the suit property after the death of Smt.Basso on the basis of Will dated 6.7.1995. Defendants no.1 and 2 got sanctioned mutation nos. 1531, 2044, and 1620 on the basis of registered Will dated 2.8.1995. The plaintiffs have also pleaded that Smt. Basso was living with them and was being served by them. She had executed a registered Will in their favour and also in favour of defendants no.1 and 2 on 6.7.1995 and the same is legal and valid. They alleged that Will dated 2.8.1995 was the result of fraud and misrepresentation as Smt. Basso never intended to execute Will only in favour of defendants no.1 and 2 and had not cancelled the Will dated 6.7.1995. It was also pleaded that Smt.Basso was sick and weak and was not in her senses at the time of execution of will dated 2.8.1995.

The defendants- respondents contested the suit by filing written statement, wherein preliminary objections regarding maintainability of the

suit and the locus- standi of the plaintiffs to file it, were taken. It was also stated that without seeking relief of possession, suit in the present form was not maintainable. However, on merits, the relationship between the parties and execution of both the Wills were admitted. It was also averred that Will dated 2.8.1995 was executed by Smt. Basso of her own free will and is legal and valid.

On the pleadings of the parties, the following issues were framed:-

1. Whether Basso executed a legal and valid registered will No.166/6.7.1995 in favour of plaintiff and defendants No.1 and 2? OPP
2. Whether mutation of inheritance No.1531 of village Kalal Wala, No.2044 of village Gahle Wala and mutation No.1628 of village Koreana, are illegal, null and void? OPP
3. Whether plaintiffs are entitled to declaration, as prayed for? OPP
4. Whether plaintiff is entitled to injunction, as prayed for? OPP
5. Whether Basso executed a legal and valid Will No.212/ 2.8.1995 in favour of defendants No.1 and 2? OPD
6. Whether suit of plaintiff is not maintainable in present form? OPD
7. Relief.

Both the parties adduced evidence in support of their claims.

After evaluating evidence of the parties, the learned trial court recorded findings on all the issues in favour of defendants no.1 and 2, except on issue no.1. While deciding issue no.1, the trial court held that, "*issue No.1 is decided in favour of the plaintiffs. Basso had though executed*

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Will on 6.7.1995 which was revoked afterwards," and dismissed the suit.

In first appeal, too, the appellants could not succeed. The appellate court affirmed the verdict of the trial court. The appellants, thereafter, have come up in regular second appeal, to this court.

Heard.

At the outset, it may be mentioned that no question of law, much less a substantial one, is involved in this appeal. The facts are not disputed by the parties and evidence has been rightly interpreted by the two courts below. Learned counsel for the appellants submitted that the appellants must be given another chance to re-agitate the matter before this court on facts. There is a concurrent finding of both the courts that the Will dated 2.8.1995 (Ex.D1), was executed by Smt. Basso in favour of defendants no.1 and 2 and the earlier Will dated 6.7.1995 was cancelled. This finding is a pure finding of fact, which cannot be gone into in a regular second appeal.

After going through concurrent finding of the two courts below already agitated by the parties, this court cannot become a third court for evaluating the evidence led by the parties. The present appeal is fully covered by the law laid down by the Hon'ble Supreme Court in *Gurdev Kaur and others vs. Kaki and others* 2007 (1) Supreme Court Cases 546, wherein it has been observed that, "*The legislative intention is very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble".*

In the net result, I find no merit in this appeal and the same is dismissed as such.

26.7.2007. (R.S.Madan)
vs. Judge.